SUPREME COURT, U.S.

No. 843

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

WARD M. VANDERPOOL,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

REPLY BRIEF TO MEMORANDUM OF THE UNITED STATES IN OPPOSITION

FERDINAND R. GOGLIO
IRVING FREDERICK
1440 Broadway
New York, New York 10018
Attorneys for Petitioner

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LA review 5-6581

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Respondent's memorandum in opposition to the petitioner's petition for a writ of certiorari is completely based on the unproven testimony allowed in the Trial Court on which the Trial Judge arrived at erroneous and arbitrary conclusions of fact and law. It is a memorandum that carefully avoids discussion of the real issues; the inept and at times improper handling of the matter by the Internal Revenue Service, and the summary handling of the hearing by the Trial Court. By ignoring completely the constitutional questions raised in the petition which

are worthy of this Court's review and which require an answer, the Respondent has tried to relegate the matter to merely one of particular facts which have already been considered and decided by a Trial Judge. Justice dictates that such a burial of the real issues should not be allowed to prevail.

The petition (Page 27) indicates where the record contains evidence contrary to or other rebuttal of allegations as to falsity of statements and the record clearly shows where the proceeds realized by petitioner from disposition of his assets were disbursed. These disbursements were disclosed to the Government in financial statements filed and were also disclosed to the Trial Court. (Government Exhibit 3 and Defendant's Exhibit 2). In fact, despite the improper connotation given to the petitioner's handling of his affairs, all of his financial transactions were disclosed to the Internal Revenue Service either in financial statements or income tax returns filed (Government Exhibits 2, 3, 5, 6, 7). All of these statements and tax returns were prepared by competent counsel to the best of their and petitioner's ability and all corrections necessary were made by the petitioner upon discovery without any advice from the Internal Revenue Service that they were necessary.

The position advanced by the Respondent is that the petitioner should be criminally sanctioned for failure to prefer the Government over other creditors which is contrary to holding in *U. S.* v. *Goodman,* 190 F. Supp. 847, 856 (N.D. Ill. 1961) and other law cited in the petition. Respondent in footnote to the memorandum in opposition (Page 5) contends that petitioner failed to comply with the condition of his probation by following advice of counsel that the statutory right to make offers in compromise was

the correct procedure to follow. Would it not follow then that a probationer loses all of his constitutional rights during a period of probation even though he is apparently satisfying the Probation Department that he is attempting to comply with the provisions of the probation? This is highly questionable, and in any event should be a conclusion for this Court to draw rather than a Respondent willing to sacrifice the constitutional rights of a citizen in order to prevent the airing of questionable and high handed handling of a case by the Internal Revenue Service and failure of the petitioner to receive an adequate hearing.

At the conclusion of the hearing Judge Decker's statement (R. 318-320) shows that he based revocation of probation on the following events:

a. Failure of petitioner to pay over outright $35,000.00 to the Government.

The vagueness of this conclusion has already been discussed in the petition in Pages 16-23.

b. Statement that petitioner had to borrow money to pay his $20,000.00 fine.

The questionable basis for this conclusion has already been discussed in the petition in Pages 29-30.

c. Failure of petitioner to list certain stocks of considerable value in his statement.

Rebuttal of this contention under the most adverse judicial conditions has already been discussed in the petition in Pages 26-27.

d. Failure of petitioner to account for disposition of receipts in the amount of $161,000.00.

Petitioner did account to the Internal Revenue Service for disposition of receipts and also accounted to the Trial Court (Government Exhibit 3 and Defendant's Exhibit 2).

e. Failure of petitioner to cooperate with the Government except on his own terms.

Petitioner and his counsel continually tried to cooperate with the Internal Revenue Service in accordance with prevailing law but all attempts were unavailing (Defendant's Exhibits 16 and 17).

Petitioner did in good faith attempt to comply with the condition of his probation by availing himself of his statutory right to make offers in compromise. These offers were summarily dismissed by an uncooperative and vindictive governmental agency which used as its weapon a power properly belonging to the Probation Department of the Federal Courts, which department never notified the petitioner that the filing of offers in compromise did not comply with the provision of his probation.

It is indisputable that in a revocation of probation proceeding a probationer is entitled to every reasonable opportunity to be heard within the common understanding of due process, and that while probation is a matter of grace, its revocation also depends on the sound exercise of judicial discretion which requires that he be accorded those rights that constitute due process. This has been recognized not only by this Court but even by the lowest State Courts. In a recent decision reported in the New York Law Journal on January 25, 1967, the Appellate Division (Fourth Department) in *The People of the State of New York, respondent,* v. *Robert Turner, appellant,* decided January 12, 1967 the Court held that where the condition of probation had not been clearly and unambiguously expressed the revocation of probation was not a sound exercise of judicial discretion.

The question of whether or not the petitioner had the benefit of due process; whether or not he was accorded

the benefits of equal protection of the laws and separation of powers are the real issues in this case. The respondent's position stated in memorandum in opposition that the Trial Judge had ample grounds for revoking petitioner's probation based on conclusions drawn at a hearing in which petitioner was deprived of due process and which conveniently ignored all pertinent aspects and constitutional questions pertaining to the case suggests that the Respondent may be more interested in sweeping the matter under the rug than in seeing justice done.

The constitutional issues presented in the petition, the relationship between public officials and those who deal with them, the preservation of civil and constitutional rights of individuals, the reliance of citizens on advice of counsel and the right of a probationer to act on advice of counsel and to expect to be advised and judged by the Probation Department in connection with the terms of his probation and not by an outside adverse administrative agency are all questions worthy of this Court's consideration.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

FERDINAND R. GOGLIO
IRVING FREDERICK
Attorneys for Petitioner
1440 Broadway
New York, New York 10018

February, 1967